period with issue, but a failure of such issue to survive the life-tenant. *In re Farmers' Loan & Trust Co.* (1907), 189 N. Y. 202, 82 N. E. Rep. 181.

On the general question of the construction to be given to such phrases as "in case of his death," see also *Carpenter et al.* v. *Sangamon Loan & Trust Co.* (1907), — Ill. —, 82 N. E. Rep. 418; *Chesterfield* v. *Hoskin et al.* (1907), — Wis. —, 113 N. W. Rep. 647. In *Britton* v. *Thornton,* 112 U. S. 526, 5 Sup. Ct. 291, 28 L. Ed. 816, it is said, "When, indeed, a devise is made to one person in fee, and 'in case of his death' to another in fee, the absurdity of speaking of the one event, which is sure to occur to all living, as uncertain and contingent has led the courts to interpret the devise over as referring only to death in the testator's lifetime. 2 JARMAN ON WILLS, c. 48; *Briggs* v. *Shaw,* 9 Allen (Mass.) 516; LORD CAIRNS in *O'Mahoney* v. *Burdett,* L. R. 7 H. L. 388, 395. But when the death of the first taker is coupled with other circumstances which may or may not ever take place, as, for instance, death under age or without children, the devise over, unless controlled by other provisions of the will, takes effect according to the ordinary and literal meaning of the words, upon death, under the circumstances indicated, at any time, whether before or after the death of the testator." In the principal case the court holds that "where the disposition of the property which is devised over in case of death is preceded by a prior estate for life or years, then the general rule is that the time of death refers to that which occurs during the period of the intervening estate." *Fowler* v. *Ingersoll,* 127 N. Y. 472, 28 N. E. 471; *Lyons* v. *Ostrander,* 167 N. Y. 135-140, 60 N. E. 334. The intent of the testator in this case is made plainer by the insertion of a comma between the words "issue" and "after," such intent thus appearing to be that at the death of S. the trust estate should terminate and the principal be distributed, and if at that time C. is alive, he should take the estate in possession, but, if he then should be dead, leaving no issue, the grandniece becomes entitled to the fund. Another construction is suggested which leads to the same conclusion,—the gift over to the grandniece is to take effect upon a double contingency. First, the death of C. without leaving issue, which means a death during the lifetime of the life-tenant; second, the death of C. during the same period with issue, but a failure of such issue to survive the life tenant.

WILLS—REVOCATION—OBLITERATION—EFFECT.—A clause of a will gave testator's entire estate to his wife, C., for her life, or as long as she remained his widow, remainder to his sons upon her decease or remarriage. Testator afterwards learned that his supposed wife had a husband living, whereupon he erased her name wherever it appeared in the will. The will was admitted to probate by the orphan's court in its entirety, notwithstanding these obliterations made after execution. *Held,* that the parts of the will revoked by the testator should be refused probate. *Collard et al.* v. *Collard et al.* (1907), — N. J. —, 67 Atl. Rep. 190.

The lower court refused to recognize the attempted revocation upon the ground that if given effect it would enlarge the estates of the other devisees, and that in such a case it would be "not simply a revocation, but a new devise or alteration of the will, which can only be made by reexecution and repub-

lication of the will in the manner provided by the statute," citing *Swinton* v. *Bailey,* 4 App. Div. Cas. 70; *Larkins* v. *Larkins,* 3 B. & P. 16; *Eschbach* v. *Collins,* 61 Md. 478, 48 Am. Rep. 123. The opinion of the Prerogative Court distinguishes these, as well as *Jackson* v. *Holloway,* 7 Johns. (N. Y.) 395; *McPherson* v. *Clark,* 3 Bradf. Sur. (N. Y.) 99; and *Wolf* v. *Bollinger,* 62 Ill. 368, from the principal case, stating that the circumstances of these cases indicated in each an intention to make a new and different devise, and not merely to revoke a part. The position of the lower court on this point cannot be regarded as wholly unreasonable. See *Miles, in re,* 68 Conn. 237, wherein it was said, "If the cancellation works an alteration of other portions of the instrument, either by way of addition or substitution, the attempted revocation is invalid, since if held valid it would permit a new and different testamentary disposition to be made in violation of the statute relating to the execution of wills." On the other hand, in *Bigelow* v. *Gillott,* 123 Mass. 102, 25 Am. Rep. 32, the court held that a revocation was valid, although the legacies devised by the eliminated sections fell into the residue, thereby increasing the estate of the residuary legatee. The opinion in the principal case says, "The method of revocation is entirely statutory, and so long as it is a revocation of a devise, an obliteration for such purpose appears to me to be authorized by the law, without regard to its effect upon other portions of the will. * * * The revocation of the gift to the wife was valid, and is not, under our statute, made nugatory, because the incidental effect of such revocation increases the residue of the estate given to the sons." This conclusion is not, however, made the basis of the decision. The court holds that the revocation in this case does not enlarge the estate given to the sons or make it a new devise, that the words erased could have had no force in postponing the enjoyment by the sons of the estate given, since there was no wife nor one who could be his widow, and that "the effect of the revocation in this case is simply the expunging of a void legacy, which, if allowed to stand, could not affect the right of the sons to the immediate possession of the estate."